



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Stephen P. Hebert
County Attorney
DeWitt County
Cuero, Texas

Dear Sir:

Opinion No. 9-2940

Re: Would the county treasurer be entitled to receive and retain as his own in addition to his fixed salary of \$1992.00 per year, the one-fourth of 1% upon all money received by him for a drainage district in the county and one-eighth of 1% upon all money by him paid out upon the order of said drainage district?

The above question is taken from your letter of November 27, upon which you request the opinion of this department.

As shown in your letter, DeWitt County's population according to the 1930 census was 27,441, and under the 1940 Federal census, 24,972.

Certain portions of the statute known as the Officers' Salary Law, Article 3912e, Vernon's Annotated Civil Statutes, which we deem material to your request, read in part as follows:

Sec. 13. The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessors and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who

perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. * * *

"Sec. 3. In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; * * * provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Prior to the enactment of the Officers' Salary Law, the Legislature saw fit to limit the commissions to be allowed to any county treasurer by the provisions of Article 3943, Vernon's Civil Statutes, not to exceed \$2,000.00 annually. Although Section 13 of Article 3912e, was amended and more recently by the 46th Legislature, an examination of the original Officers' Salary Bill, Acts of 1935, 44th Legislature, 2nd Called Session, Chapter 465, reveals that the treasurer was specifically named therein as presently shown in Section 13. In this respect said original act did not conflict with or repeal Articles 3941, 3942 and 3943, relating to the commissions authorized to be received by the county treasurer.

0-988

In our opinion No. 0-988, rendered January 23, 1939, found on page 24 of the Attorney General's Annual Report for 1939, we held that Article 3912e does not require the commissioners' court to set the salary of the county treasurer at the maximum, but that it may fix the compensation of the county treasurer at any rate not exceeding the statutory rate and may reduce the maximum sum to be paid to less than the statutory sum, and that the county does not owe the treasurer the dif-

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ference between the salary fixed by the commissioners' court and maximum provided by Article 3943.

Where drainage districts are created under the provisions of Chapter 7, Title 128, Vernon's Civil Statutes, by Articles 8146 and 8147, it is the mandatory duty of the county treasurer to assume the duties of the treasurer of such district and he is required to execute bond for the faithful discharge of such duties; open an account with the district and keep an accurate account of all moneys received by him belonging to such district and of all amounts paid out by him. By the provisions of Article 8148, it is provided that the treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district and one-eighth of one per cent upon all money by him paid out upon the order of the district.

We are mindful of the construction given Articles 3941 - 3943 in connection with the above mentioned articles pertaining to the duties and commissions allowed the county treasurer as treasurer of a drainage district in the case of Harris County vs. Charlton, S. Ct., 243 S. W. 439, affirming judgment of the Court of Civil Appeals, Charlton vs. Harris County, 228 S. W. 969, in the light of and in connection with the maximum fee bill previously to the enactment of the Officers' Salary Law. Under the holding in that case, the treasurer would be authorized to retain such additional fees allowed him under the provisions of Article 8148. Since the enactment of the Officers' Salary Law and as expressed in Section 3, supra, with the treasurer expressly named therein, it is apparent that the Legislature intended the county treasurer to receive his salary in lieu of all other fees, commissions or compensations which he would otherwise be authorized to retain, with such commissions allowed him by any drainage district to be placed in the officers' salary fund. We find that such construction of the Officers' Salary Law relative to the commissions allowed the county treasurer under the provisions of Article 8148, Vernon's Civil Statutes, has been followed by this department dating from its original enactment.

Article 3912e-2, subsection (e) referred to in your letter, applies only to counties where the population is in excess of 355,000 according to the last preceding or any future Federal census, consequently it does not apply to your county. It might be interesting to note, however, that since the enactment of the original Officers' Salary Law, the

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Legislature has dealt with the county treasurer in certain counties, separately from other county officers in that although Article 3912e-2 underwent two amendments by the Legislature, not until the enactment of House Bill 874 by the 46th Legislature, Chapter 11, found in the Special Laws of Texas, page 607, now appearing as Subsection (e) to which you refer, does the provision appear which reads "Where such treasurer acts also as treasurer of any navigation and drainage districts, he shall receive and be entitled to retain such compensation from such districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925."

It is therefore the opinion of this department that where the commissioners' court has set and fixed the salary of the county treasurer under the provisions of the Officers' Salary Law, Section 13, Article 3912e, Vernon's Civil Statutes, the treasurer is not entitled to retain as his own, commissions allowed him under the provisions of Article 8148 of said statutes but same should be paid into the officers' salary fund from which he draws his salary.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Wm. J. R. King
Wm. J. R. King
Assistant

WJRK:EP

APPROVED DEC 16, 1940

Gerrard Mann
ATTORNEY GENERAL OF TEXAS

